

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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Melvin JOHNSON, Jamal SCOTT, and  
Armando TORRES; individually and on  
behalf of all similarly situated individuals,

Plaintiffs,

-vs-

**ANSWER TO THE  
COMPLAINT**

**18-CV-6568**

NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY  
SUPERVISION, GOVERNOR ANDREW  
CUOMO, in his official capacity, ACTING  
COMMISSIONER ANTHONY ANNUCCI,  
in his official capacity, and THE STATE OF  
NEW YORK,

Defendants.

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Defendants by their attorney, Barbara D. Underwood, Attorney General of the State of New York, Gary M. Levine, of counsel, for their answer to the petition in the above captioned proceeding, respectfully alleges as follows:

1. Denies knowledge or information as to allegations contained in paragraphs 1, 2, 4, 8, 9, 10, 22, 26, 28, 30, 32, 37, 39, 40, 41, 42, 43, 45, 46, 47, 48, 54, 55, 56, 57, 58, 59, 60, 63, 64, 65, 66, 69, 70, 71, 74, 75, 76, 77, 102, 108, 111, 120, 122, 123, 124, 127, 128, 129, 130, 131, 132, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 162, 163, 164, 165, 167, 168, 169 and 170 of the petition.
2. Denies the allegations contained in the paragraphs numbered 6, 7, 20, 21, 29, 44, 52, 53, 61, 62, 67, 72, 81, 82, 84, 85, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 103, 104, 107, 112, 114, 115, 116, 118, 121, 125, 126, 133, 135, 136, 137, 140, 141, 142, 143, 156, 157, 158, 159, 160, 171, 173 and 174 of the petition.
3. Admits to the allegations contained in paragraphs numbered 3, 5, 11, 12, 13, 14, 15,

16, 17, 18, 19, 23, 24, 25, 27, 31, 33, 34, 35, 36, 38, 49, 50, 51, 68, 73, 78, 79, 80, 83, 86, 101, 105, 106, 109, 110, 113, 117, 119, 134, 138, 139, 166 and 172 of the petition.

4. Repeats the allegations contained in paragraphs 144 and 161 of the petition.
5. Denies each and every allegation of the petition not otherwise specifically addressed.

**AS AND FOR A FIRST, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANTS ALLEGE:**

6. That this action is barred, in whole or in part, by plaintiffs' failure to exhaust their administrative remedies.

**AS AND FOR A SECOND, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANTS ALLEGE:**

7. That this action is barred, in whole or in part, by collateral estoppel or res judicata.

**AS AND FOR A THIRD, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANTS ALLEGE:**

8. The defendants, at all times relevant hereto, acted without malice and under the reasonable belief that their actions were proper and in accordance with existing law and did not violate any of the plaintiffs' rights.

9. Consequently, the defendants is entitled to qualified immunity.

**AS AND FOR A FOURTH, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANTS ALLEGE:**

10. The doctrine of respondeat superior does not apply in actions brought pursuant to 42 U.S.C. §1983, and bars relief to the plaintiffs.

**AS AND FOR A FIFTH, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANTS ALLEGE:**

11. That this action is barred, in whole or in part, by the Eleventh Amendment to the United States Constitution.

**AS AND FOR A SIXTH, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANTS ALLEGE:**

12. The complaint is barred in whole or in part due to plaintiffs' failure to file the complaint within the applicable Statute of Limitations.

**WHEREFORE**, defendants pray that judgment be entered dismissing the complaint in all respects and that defendants be awarded reasonable costs and attorneys' fees and for such other and further relief as may be just, proper, and equitable.

Dated: October 5, 2018  
Rochester, New York

BARBARA D. UNDERWOOD  
Attorney General of the State of New York  
Attorney for all Defendants

s/Gary M. Levine  
GARY M. LEVINE  
Assistant Attorney General of Counsel  
NYS Office of the Attorney General  
144 Exchange Boulevard, Suite 200  
Rochester, New York 14614  
Telephone: (585) 546-7430  
gary.levine@ag.ny.gov

**CERTIFICATE OF SERVICE BY MAIL**

I certify that on October 5, 2018, I electronically filed the foregoing Answer to the Complaint on behalf of all defendants with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. Jessica Louise Barlow  
Disability Rights New York  
44 Exchange Blvd  
Suite 110  
Rochester, NY 14614  
585-512-4841  
585-348-9823 (fax)  
jessica.barlow@drny.org
2. Simeon L. Goldman  
Disability Rights New York  
725 Broadway  
Suite 450  
Albany, NY 12207  
518 432-7861  
518 427-6561 (fax)  
sim.goldman@drny.org
3. Megan T Williams  
Disability Rights New York  
725 Broadway  
Suite 450  
Albany, NY 12207  
518 275-9492  
518 427-6561 (fax)  
megan.williams@drny.org

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. n/a

BARBARA D. UNDERWOOD  
Attorney General of the State of New York  
Attorney for all Defendants

s/Gary M. Levine  
GARY M. LEVINE  
Assistant Attorney General of Counsel  
NYS Office of the Attorney General  
144 Exchange Boulevard, Suite 200  
Rochester, New York 14614  
Telephone: (585) 546-7430  
gary.levine@ag.ny.gov